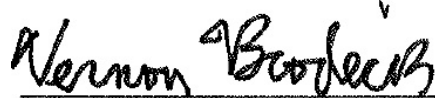


Time for moving for summary judgment is stayed pending a decision of the Rule 37(e) motion before the Magistrate Judge

SO ORDERED:



HON. VERNON S. BRODERICK 1/2/2020
UNITED STATES DISTRICT JUDGE Part I

VIA ECF

Honorable John G. Koeltl
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Joint Proposed Discovery Schedule
Charlestown Capital Advisors, LLC v. Acero Junction, Inc., et al.,
No. 18-cv-04437 (JGK)

Dear Judge Koeltl,

We represent Plaintiff Charlestown Capital Advisors, LLC (“Charlestown”), in the above-captioned matter. Because Plaintiff intends to file, by January 13, 2020, a motion under Federal Rule of Civil Procedure 37(e) to preclude certain evidence, among other things, Plaintiff respectfully requests that the Court stay the deadline for filing motions for summary judgment until such time the Court has ruled on Charlestown’s Rule 37(e) motion. Defendants Acero Junction, Inc., (“Junction”), and Acero Junction Holdings, Inc. (“Holdings”) (collectively, “Acero”), and JSM International Limited (“JSM”), do not consent to Plaintiffs’ request.

Your Honor entered the current Scheduling Order in this case on September 30, 2019 [ECF No. 97]. Under that Order, summary judgment motions are currently due 21 days after the conclusion of expert and fact discovery. Shortly thereafter, Your Honor referred this matter to Magistrate Judge Moses for general pre-trial matters, including the scheduling of discovery and nondispositive pre-trial motions [ECF No. 98]. On October 24, 2019, following a discovery conference before Magistrate Judge Moses, Magistrate Judge Moses ordered the fact discovery deadline extended to December 24, 2019, in order to accommodate the schedules of Defendants’ witnesses for depositions in the United

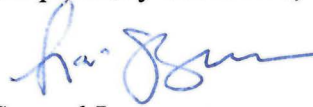
Hon. John G. Koeltl
January 2, 2020
Page 2

States. [ECF No. 111]. Under Your Honor's Scheduling Order, summary judgment motions are currently due 21 days thereafter, on January 14, 2020.

On November 25, 2019, pursuant to Magistrate Judge Moses's discovery order, Acero submitted affidavits regarding its document search and collection procedures. Through these affidavits, Charlestown learned for the first time that the email account for Jateen Kapoor, a key witness in this lawsuit and whose signature appears on the contract at issue, had been deleted sometime between May and August 2019, and that Acero could no longer search or access any of Mr. Kapoor's emails. In addition, responsive emails that had previously been extracted from Mr. Kapoor's email account but had not yet been produced were also no longer available. Accordingly, at a discovery conference before Magistrate Judge Moses on November 26, 2019, Charlestown requested permission to file a motion under Fed. R. Civ. P. 37(e) related to the destruction of Mr. Kapoor's emails. Judge Moses granted Charlestown's request and ordered Charlestown to file its motion by January 13, 2020. [ECF No. 121]

Because the outcome of Charlestown's Rule 37(e) motion to preclude will affect the evidence that may be used and the issues to be addressed in any motion for summary judgment, and may obviate the need for a summary judgment motion altogether, Charlestown respectfully requests that the Court stay the deadline for filing motions for summary judgment pending a ruling on Charlestown's Rule 37(e) motion.

Respectfully Submitted,



Samuel Lonergan